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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

In the Matter of )  
)  
Amendment of Part 90 of the )  
Commission's Rules to Facilitate )  
Future Development of SMR Systems )  
in the 800 MHz Frequency band )  
)  
and )  
)  
Implementation of Section 309(j) )  
of the Communications Act -- )  
Competitive Bidding 800 MHz SMR )

PR Docket No. 93-144  
RM-8117, RM-8030  
RM-8029

PP Docket No. 93-253

To: The Commission

REPLY COMMENTS OF DIAL CALL COMMUNICATIONS, INC.  
ON FURTHER NOTICE OF PROPOSED RULE MAKING

DIAL CALL COMMUNICATIONS, INC.

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### **Summary**

Dial Call supports a licensing framework which provides MTA Licensees access to exclusive-use contiguous channels assigned on a geographic basis. Dial Call supports the licensing of a single ten MHz MTA based license ("MTA License"). Dial Call supports mandatory relocation of incumbent SMR systems after a specified period for voluntary arrangements, provided specific safeguards are implemented to prevent disruption to incumbent licensees' systems. Dial Call continues to support the Commission's proposal that the MTA Licensee be required to provide coverage to one-third of the MTA population within three years of initial license grant and two-thirds of the MTA population by the end of the five-year construction period. Moreover, Dial Call continues to support a definition of coverage which requires the construction of some percentage of frequencies authorized by the MTA License over the required population coverage area.

Dial Call again urges the Commission to recognize the substantial investment made and funding raised by companies to develop wide-area, enhanced SMR systems by permitting those licensees which have obtained extended implementation authorizations to convert and establish digital wide-area systems to go forward with the construction, implementation and operation of their systems utilizing those extended implementation schedules already authorized. Dial Call also continues to support the adoption of a defined service area for SMR licensees, allowing existing SMR

licensees to construct stations anywhere within their defined protected service areas.

Dial Call continues to believe that to employ auctions to select from among mutually exclusive MTA License applicants risks ignoring the hundreds of millions of dollars poured into the creation of the enhanced SMR industry by companies such as Dial Call in reliance upon the existing regulatory structure. If auctions are employed to award the MTA Licenses, incumbent licensees should be afforded bidding credits keyed to the number of channels licensed to the incumbent in the MTA. Simultaneous multiple-round auctions would be the preferred auction method due to the interdependence of MTA Licenses.

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**REPLY COMMENTS OF DIAL CALL COMMUNICATIONS, INC.**  
**ON FURTHER NOTICE OF PROPOSED RULE MAKING**

Dial Call Communications, Inc. ("Dial Call"), pursuant to FCC Rule Section 1.415(a), replies to the various comments submitted with respect to the Further Notice of Proposed Rule Making ("Further Notice"),<sup>1/</sup> released in this proceeding, and shows the following:

**I. Introduction and Summary.**

1. As indicated in its opening comments, Dial Call is an established provider of Specialized Mobile Radio Service ("SMR") throughout the south, and has made a substantial investment in establishing a digital enhanced SMR system throughout the southern United States ("Digital Wide Area Network" or "DPCN"). As previously announced, Dial Call expects to commence providing service in various markets in the second quarter of 1995.

2. Dial Call has reviewed and considered the comments and issues raised by the parties in light of its experience as an SMR operator and its ongoing deployment activities for implementing its

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<sup>1/</sup> 9 FCC Rcd \_\_\_\_\_, FCC 94-271, 59 Fed. Reg. 60112 (Nov. 22, 1994).

DPCN. Based on that review, Dial Call wishes to emphasize for the Commission those key points which are essential to ensure the fashioning of workable rules to facilitate the use of formerly local SMR spectrum for the offering of wide-band Commercial Mobile Radio Service ("CMRS"). Dial Call supports a licensing framework which provides MTA Licensees access to exclusive-use contiguous channels assigned on a geographic basis. Accordingly, Dial Call has come to the conclusion that, given the significant licensing which has already occurred in the SMR band, the new rules will have to include some form of mandated migration after a specified period, coupled with specified benefits to encourage voluntary migration. No incumbent licensee would be required to be retuned/relocated, however, unless the MTA Licensee provides the incumbent licensee with comparable alternative 800 MHz frequencies, with no system design interruptions, and pays all retuning costs.

3. As Dial Call set forth in its opening comments, it is committed to the Commission's proposal to allocate ten MHz of 800 MHz spectrum currently allocated to "local" SMR operations ("Contiguous 800 MHz SMR Channels") for the licensing of wide-area SMR networks. Dial Call again emphasizes that the Commission should be mindful to protect the significant investments Dial Call and other incumbent 800 MHz licensees legitimately have made in implementing wide-area systems prior to this proceeding.

4. Specifically, Dial Call supports the licensing of a single ten MHz MTA based license ("MTA License"). Upon review of the comments and in light of its concern regarding the difficulty of

achieving contiguous spectrum, Dial Call would support mandatory relocation of SMR systems after a specified period for voluntary arrangements, provided specific safeguards are implemented to prevent disruption to incumbent licensees' systems. Dial Call continues to support the Commission's proposal that the MTA Licensee be required to provide coverage to one-third of the MTA population within three years of initial license grant and two-thirds of the MTA population by the end of the five-year construction period. Moreover, Dial Call continues to support a definition of coverage which requires the construction of some percentage of frequencies authorized by the MTA License over the required population coverage area.

5. Furthermore, Dial Call again urges the Commission to recognize the substantial investment made and funding raised by companies to develop wide-area, enhanced SMR systems by permitting those licensees which have obtained extended implementation authorizations to convert and establish digital wide-area systems to go forward with the construction, implementation and operation of their systems utilizing those extended implementation schedules already authorized. In addition, Dial Call continues to support the adoption of a defined service area for SMR licensees, allowing existing SMR licensees to construct stations anywhere within their defined protected service areas.

6. Finally, Dial Call continues to believe that to employ auctions to select from among mutually exclusive MTA License applicants risks ignoring the hundreds of millions of dollars poured

into the creation of the enhanced SMR industry by companies such as Dial Call in reliance upon the existing regulatory structure. Thus, if auctions are employed to award the MTA Licenses, incumbent licensees should be afforded bidding credits keyed to the number of channels licensed to the incumbent in the MTA. Simultaneous multiple-round auctions would be the preferred auction method due to the interdependence of MTA Licenses.

**II. Dial Call continues to support the licensing of a single ten MHz block license for the "upper" 200 channels in each MTA.**

7. Dial Call reiterates its view that to create regulatory parity among the MTA Licensee and cellular and broadband PCS providers, the Commission should license one ten MHz block of contiguous spectrum per MTA.

8. In its opening comments, Dial Call strongly favored licensing on an MTA basis. This was necessary in Dial Call's view to achieve parity with cellular and broadband PCS providers. Dial Call believes that in light of the past regulatory advantages enjoyed by cellular and broadband PCS systems, licensing on a smaller scale than MTA's (or their equivalent) would place wide-band SMR providers at a severe competitive disadvantage to cellular and PCS providers.<sup>2/</sup>

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<sup>2/</sup> Indeed, after considering the needs of wide-area SMR systems to compete with emerging PCS and regionally clustered cellular systems, the Commission previously determined that MTAs are the appropriate area for licensing wide-area SMR systems. See Regulatory Treatment of Mobile Services, FCC 99-212, 59 Fed. Reg. 59945 (1994), at para. 99. Given that the footprint of most existing wide-area SMR systems cover multiple MTAs, licensing on a smaller than MTA scale would be inefficient.  
(continued...)



9. With respect to the issue of the size of the MTA License blocks, after reviewing the various comments on this aspect of the Commission's proposal, Dial Call supports a single 200 channel block license. A Dial Call previously stated, the licensing of four 50 channel blocks as the Commission proposed would impede the ability of carriers to offer technically advanced wide-area commercial mobile radio service on these frequencies and unduly disrupt incumbent licensees.

10. To be competitive with cellular and broadband PCS systems, a bare minimum of ten MHz of contiguous spectrum is needed. A 2.5 MHz (50 channel) block is not sufficient to provide advanced wide-area service with sufficient channel capacity to compete with other broadband CMRS providers.<sup>3/</sup> Two hundred channels (ten MHz) are necessary for MTA Licensees to be able to compete in the CMRS marketplace. Indeed, cellular licensees have 25 MHz of contiguous spectrum on which to operate, whereas PCS licenses will be issued

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<sup>2/</sup> (...continued)

Dial Call is aware of proposals for licensing on a BEA and on a clustered BEA basis (in groups of four BEAs per cluster). Licensing on a BEA basis would not be workable. The protected contours of a substantial percentage of existing licensed systems would overlap BEA boundaries. This would make it difficult for BEA licensees to negotiate with incumbent system licensees to achieve a contiguous block of spectrum, since in many instances co-channel incumbent licensees would be located in neighboring BEAs. Licensing on a BEA basis would also complicate and delay the ability of wide-area SMR licensees to achieve the regional economies of scale that have evolved in the cellular service. Licensing on a clustered BEA basis may be an acceptable result as the size of such clusters would be similar to MTAs.

<sup>3/</sup> See Motorola Comments at 5-7.

for up to 30 MHz of spectrum. Moreover, MTA Licensees will be placed at tremendous competitive disadvantage if they are tasked with the time and expense of aggregating four 2.5 MHz blocks of spectrum rather than being able to license one ten MHz block.<sup>4/</sup> Licensing wide-area SMR spectrum in less than a ten MHz block would be contrary to the concept of regular parity and the public interest, and thus falls short of the Congressional mandate.

11. The existence of four discreet licensees sharing the ten MHz of spectrum vastly complicates the retuning process and promises to disrupt existing licensees being retuned. As Dial Call previously explained, 800 MHz licensing has been on a five-channel non-contiguous block basis, generally with each channel being separated by one megahertz. Therefore, with MTA Licenses being issued on a 2.5 MHz basis, unless a CMRS provider aggregates all four blocks, incumbent licensees may have to be confronted with up to four different MTA Licensees at four different times demanding that they retune. This would be grossly unfair to incumbent licensees, and impracticable for MTA Licensees.

12. Clearly, different MTA Licensees will have divergent implementation plans, and thus differing needs for retuning of incumbent licensees. A clear risk therefore exists that licensees

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<sup>4/</sup> In addition, the licensing of four 2.5 MHz blocks of wide-band spectrum enhances the ability of non-SMR providers to bid on this spectrum merely for speculative or for anticompetitive, obstructionist purposes. Such abuse is significantly less likely in the case of a full 10 MHz frequency block since the cost of acquiring and using the spectrum for anything other than CMRS would likely be prohibitive.

will be confronted with multiple demands for retuning. This would be unduly burdensome for incumbent licensees and could seriously injure their customer goodwill. MTA Licensees would likewise be disadvantaged because they would suffer proportionately higher costs of effecting retuning, again adversely affecting their ability to compete with other wide-band CMRS providers.

13. Similar problems would still exist if the Commission declines to institute any form of mandatory retuning. For example, were the Commission to rely exclusively on negotiations between the MTA Licensees and incumbent licensees, incumbent licensees would still be placed in the position of having to negotiate with up to four different MTA Licensees, each with its own separate plans and timetable. And MTA Licensees would still be faced with the inefficiencies discussed above, only they would have no authority to mandate relocation of the myriad of incumbent licensees with whom they would be forced to deal. Thus, with or without mandatory retuning, inefficiency and delay would result from licensing wide-band systems of less than the full ten MHz.<sup>5/</sup>

**III. Dial Call supports mandatory relocation of incumbent licensees provided they are afforded adequate protection from disruption.**

14. After considering the various comments and participating in negotiations with others in the industry in an attempt to reach a consensus, Dial Call has modified its position on the need for FCC

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<sup>5/</sup> If the Commission adopts a four block allocation scheme it must adopt some means of coordinating retuning requests so that an incumbent licensee is only retuned once. Any other result would unfairly disrupt the operations of incumbent licensees.

mandated retuning. Recognizing the potential difficulties of achieving contiguous spectrum without mandatory retuning, Dial Call now supports a "phased in" mandatory provision which is predicated on a specified period for voluntary retuning arrangements, encouraged by incentives for incumbent licensees. Provided that incumbent licensees are afforded adequate protection from system disruption (e.g., that they are provided functionally equivalent, one-for-one frequency swaps which are compatible with their overall frequency plans), Dial Call believes that phased in, mandatory retuning would on balance serve the public interest by promoting regulatory parity and expediting the delivery of enhanced services to the public.

15. Dial Call believes that regulatory parity requires MTA Licensees to have available contiguous, clear spectrum, just as the Commission is providing cellular and PCS licensees. Accordingly, some form of mandatory relocation is required to ensure that MTA Licensees are able to achieve contiguous, clear spectrum. Nevertheless, the equities of incumbent licensees are significant. All costs of retuning (voluntary or involuntary) must be borne by the MTA Licensee at whose instance the incumbent is retuned. Moreover, retuning of an incumbent licensee could occur only if comparable spectrum is provided. In addition, to ease the burden on incumbent and MTA Licensees, the FCC should offer certain incentives to licensees to voluntarily retune their systems. Dial Call is aware of and agrees with proposals to include as incentives, (1) the award of tax certificates as appropriate, (2) the provision

to the retuned licensee of prospective 70 mile co-channel protection, (3) no future retuning of these licensees, and (4) the ability to freely transfer these rights with any assignment or transfer of the license.

16. Finally, Dial Call emphasizes that any retuning (voluntary or involuntary) must be accomplished so as not to disrupt the operations of incumbent licensees. As Dial Call indicated in its comments, a serious concern of retuning is its potential to disrupt the complex system designs of incumbent licensees operating existing integrated systems. These licensees have devoted substantial resources to planning and constructing those systems. Any provision for mandatory retuning must provide these licensees maximum protection from disruption. If an MTA Licensee desires to require an incumbent licensee to relocate any channels held by that incumbent licensee, the MTA Licensee should be required to relocate any other channels held by that incumbent licensee necessary to the proper functioning of that licensee's integrated system. This retuning must be with functionally equivalent, non-interfering frequencies. In this way, MTA Licensees will neither be able to cherry-pick particularly attractive channels, nor subject integrated system licensees with unwarranted disruption of their systems by relocating only a few channels sufficient to render the incumbent licensee's frequency plan unworkable.<sup>5/</sup> Thus, an operator of an

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<sup>5/</sup> In a system as complex as Dial Call's DPCN, the retuning of any one particular channel may result in the need to retune a number of additional channels in order to maintain the  
(continued...)

integrated system would be subject to retuning only once in an MTA.<sup>2/</sup> After that one time, the licensee would be guaranteed not to be subjected to disruption again by a competitive CMRS provider.

**IV. Dial Call supports a five-year construction requirement that couples minimum population coverage with construction of a significant number of frequencies.**

17. Dial Call continues to support the imposition of stringent construction requirements to deter speculation in MTA Licenses by parties who do not have the ability or intention to provide service. As made clear in Dial Call's opening comments, it supports the Commission's proposal that to satisfy construction requirements, the MTA Licensee would be required to provide coverage to at least one-third of the MTA population within three years of its initial license grant and to provide coverage to at least two-thirds of the MTA population within five years. Additionally, as Dial Call previously stated, it supports coupling such population coverage requirements with a requirement that a specified percentage of the frequencies authorized under the MTA License be constructed over the covered population. The failure of the MTA Licensee to properly

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<sup>6/</sup>(...continued)

integrity and workability of the licensee's frequency plan. Thus, if an integrated system operator is required to retune, the MTA Licensee who requires that retuning must bear the expense of retuning any additional channels necessary to maintain the overall integrity and workability of the integrated system operator's frequency plan.

<sup>2/</sup> Even were the Commission to award more than one MTA License per MTA, it would be important to establish safeguards so that no incumbent licensee would be forced to retune more than once.

construct an MTA License should result in forfeiture of that license.

**V. Dial Call supports the Commission proposal to incorporate provisions that would enable incumbent systems to construct within a defined protected service area.**

18. Dial Call continues to believe that incumbent licensees should be provided maximum flexibility to maintain and expand existing systems by allowing construction of new base stations within the 22 dBu interference contour(s) of the originally authorized station(s), which would constitute these licensees' defined service area. Incumbent licensees should be able to move, modify or remove facilities as necessary to provide service to their customers in their defined service areas without prior Commission approval.<sup>8/</sup> Commission approval of new facilities or facility relocations would be necessary only if the new or modified facilities extended a licensee's service area as defined by the 22 dBu contours of the original authorization(s).<sup>9/</sup> Any other result would be contrary to the Congressionally mandated requirement of

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<sup>8/</sup> This would include the ability to operate lower power "split-cells," which would facilitate frequency reuse and other techniques to improve spectrum efficiency.

<sup>9/</sup> Unless the service contour is increased, there is no reason to burden the Commission with the need to approve such a minor change in facilities.

regulatory parity since incumbent cellular and other CMRS licensees are accorded similar flexibility.

**VI. Existing licensees should retain extended implementation grants.**

19. Dial Call continues to support the Commission's proposal to allow incumbent licensees to continue to operate existing, authorized systems (including continuing to prosecute license modifications of such systems) in the 800 MHz band. As made clear in its opening comments, to do otherwise would unfairly penalize Dial Call and other enhanced SMR pioneers who have made huge investments in implementing enhanced SMR service.<sup>10/</sup> Dial Call and other existing licensees constructing enhanced systems have relied on their existing grants and on the Commission's existing rules in fund raising and making long range plans and investments to bring advanced communications services to the public. The public interest would not be served by any action which would jeopardize the substantial investments these companies have made with the Commission's approval and encouragement.

**VII. Any plan for awarding the MTA Licenses must recognize the considerable investment made by existing licensees.**

20. Dial Call continues to disagree with awarding MTA Licenses by competitive bidding. Auctioning MTA Licenses runs the risk of ignoring the hundreds of millions of dollars invested in acquisitions and infrastructure by existing licensees such as Dial

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<sup>10/</sup> These investments have been largely financed by purchases of debt and equity securities by members of the public who have relied upon continuity of the Commission's rules and policies.



Call. Any method of awarding licenses for this spectrum must recognize the contribution of these entities to wide-area SMR service. They should not be required to spend additional amounts and, perhaps, be forced to bid against third parties that to date have taken no interest in creating and building the enhanced wide-area SMR industry, merely to retain the right to offer wide-area service. If the Commission determines to award MTA Licenses by auction, existing SMR licensees should be entitled to a bidding credit, the amount of which would vary depending on each licensee's number of licensed channels in the MTA. Such a bidding credit would recognize, at least to a degree, the licensees' past investment and commitment to SMR service.

21. Dial Call does not believe it is appropriate to extend bidding credits, however, to so-called designated entities. As the Commission is aware, the constitutionality of such preferences is questionable. In the interest of regulatory parity, it is important to expedite the award of MTA Licenses. Injecting the constitutional uncertainty of bidding credits for designated entities into this proceeding can only serve to delay its ultimate resolution. In addition, unlike PCS and other emerging technologies, the SMR industry is well developed and fully licensed. The right that would be auctioned here is predominately the right to consolidate the existing spectrum into a contiguous block. If any preference is awarded it should be to those parties which by their prior actions have evidenced a commitment to achieving the Commission's goal of

employing this spectrum to provide competitive wide-band CMRS service.

22. If the Commission determines that it will auction MTA Licenses, it should employ simultaneous multiple-round bidding procedures due to the high degree of interdependence between the MTA Licenses. The authorized footprints of many existing wide-area systems encompass multiple MTAs. Licensees have spent hundreds of millions of dollars implementing large regional enhanced SMR systems. The opportunity to acquire multiple adjacent MTA Licenses to provide major market, regional or nationwide enhanced SMR service is essential if MTA Licensees are to compete effectively with cellular and emerging PCS providers. For similar reasons, any auction rules the Commission may adopt should be sufficiently flexible to allow the formation of bidding consortia, partnerships or other arrangements prior to the auctions.

#### **VIII. Conclusion.**

23. In sum, Dial Call supports the licensing of one contiguous ten MHz MTA block license. Dial Call supports mandatory relocation to achieve a contiguous ten MHz block of frequency, but only after a specified period in which incentives are provided for voluntary arrangements for retuning, and only with adequate safeguards to ensure that incumbent licensees will not be disrupted. Dial Call supports a five-year construction requirement that couples minimum population coverage with construction of a significant number of frequencies. Dial Call further supports the Commission proposal to incorporate provisions that would enable incumbent systems to

construct and modify their systems within a defined protected service area, with the proviso that existing licensees should retain grants of authority for extended implementation schedules.

WHEREFORE, THE PREMISES CONSIDERED, Dial Call Communications, Inc. respectfully requests that the Commission take action in this proceeding in a manner consistent with these reply comments.

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**March 1, 1995**